Gloversville Embossing Corp. *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO. Cases 3–CA–17217 and 3–CA–17880

September 23, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On September 15, 1993, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.[1]

The judge found, inter alia, that the Respondent complied with the Union's June 19, 1992 request for payroll information, albeit not in a timely manner.[2] In his exceptions, the General Counsel contends that the information the Respondent provided was not only untimely, but also incomplete. For the reasons set forth below, we find merit in the General Counsel's exceptions.

This case arises in the context of the parties' negotiations for a new collective-bargaining agreement to succeed the one that was in effect from February 1, 1988, to January 31, 1991. By June 1992, the parties had not reached agreement on the terms of a new contract.

On June 19, 1992, the Union sent the Respondent a letter requesting payroll records for bargaining unit employees. The June 19, 1992 information request stated, inter alia:

> In an effort to fulfill the Union's duty of fair representation and responsibilities it is again necessary to obtain certain information from you.
>
> The purpose of this request is that the Union believes that our contract which expired on February 1, 1991 has been violated. In addition, because of your continued demands in our current negotiations for a 10% across the board wage cut, the Union believes you have been engaging in unfair bargaining. Please provide the Union with the following information:
>
> 1. Beginning February 1, 1988 to the present copies of all payroll records for all bargaining unit employees.

On August 17, 1992, the Respondent provided payroll records dating from February 1988, but limited to unit employees employed at the time of the request. The judge found that the Respondent legitimately construed the Union's letter as a request for payroll records for the existing bargaining unit employees. We do not agree.

There is no dispute that the employee wage and employment information desired by the Union is presumptively relevant for purposes of collective bargaining. See, e.g., *Trustees of Masonic Hall*, 261 NLRB 436 (1982); *Verona Dyestuff*, 233 NLRB 109 (1977). What is in dispute is whether the Union's communication was sufficiently clear to place the Respondent on notice that the Union actually wanted payroll records for all unit employees employed since February 1, 1988, not just for all unit employees employed at the time of the request.

It is well established that the adequacy of a union's request for information must be judged in light of ''the entire pattern of facts available to [the employer],'' not just the bare words of the request itself. *Ohio Power Co.*, 216 NLRB 987, 990 fn. 9 (1975), enfd. mem. 531 F.2d 1381 (6th Cir. 1976).

Here, the ''pattern of facts available'' to the Respondent include the following: the Union's letter began by stating that the Union was requesting certain information in order to fulfill its duty of fair representation; the letter continued by stating that ''the purpose'' of the information request was the Union's belief that the expired contract had been violated; and the letter concluded by requesting ''all payroll records for all bargaining unit employees'' beginning the first day of the expired contract and continuing through the 3-year life of that contract to the present day. Given the clear statement of the Union's purpose (its belief that contract violations had occurred) and given the Union's explicit request for payroll information beginning on the first day of the contract, it should have been apparent to the Respondent from the face of the Union's letter that the information the Union needed and wanted must have included the payroll records of all unit employees employed during the term of the 1988–1991 contract. Instead, the Respondent limited the information it furnished to the payroll records of unit employees presently employed. This was not responsive to the Union's letter because on the basis of the information supplied the Union would still be unable to accomplish its purpose of uncovering contract violations insofar as unit employees no longer working were concerned.

[1] We shall correct the judge's recommended Order and notice to reflect that the failure to pay Christmas bonuses occurred in December 1992, not December 1993.

[2] No exceptions were filed to the judge's findings that the Respondent violated Sec. 8(a)(5) by failing to provide the requested information in a timely manner; by bargaining to impasse over a permissive subject; and by unilaterally changing terms and conditions of employment.

For these reasons, we find, contrary to the judge, that the Union's request, taken in context, unambiguously informed the Respondent of the specific information the Union desired.[3] Therefore, we conclude that the Respondent violated Section 8(a)(5) and (1) not only by failing to provide the requested information in a timely manner, as the judge found, but also by failing to provide the requested information in a complete manner. Accordingly, we shall order the Respondent to furnish the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Gloversville Embossing Corp., Gloversville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bargaining to impasse over its demand for a 10-percent wage cut, where such demand is made for the purpose of recouping moneys paid to employees pursuant to a previous Board Order and backpay settlement.

(b) Failing to provide wage information to Amalgamated Clothing and Textile Workers Union, AFL–CIO (the Union) in a complete and timely manner.

(c) Unilaterally changing terms and conditions of employment and failing to pay Christmas bonuses to its employees in December 1992 without first bargaining in good faith with the Union about such changes.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production employees employed by the Respondent at its Gloversville plant; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Provide the Union with the payroll information requested in its June 19, 1992 letter.

(c) Make whole the employees who were not paid Christmas bonuses in December 1992 in the manner described above in the remedy section of the judge's decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Gloversville, New York, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER STEPHENS, dissenting in part.

While I agree with my colleagues that the Respondent violated Section 8(a)(5) and (1) of the Act by its lack of timeliness in responding to the Union's June 19, 1992 information request, I do not agree that there is any additional ground for violation in the Respondent's failure to construe the request as seeking 1988–1992 payroll records for employees who were no longer in the bargaining unit at the time of the request, as well as such records pertaining to current unit employees. My colleagues insist that the Respondent should have gleaned from the Union's reference to a possible contract violation that the Union must have wanted records for all employees working after February 1, 1988, even those who had departed by the time of the request. But the Union nowhere explained what sort of contract violation it was alleging, and the reference to alleged unfairness in the Respondent's existing demand in contract negotiations for a wage cut appeared to relate solely to current employees. The Union could easily have been more specific in describing either the scope of its contract violation claim or the documents it was seeking. Like the judge, I would find that the Respondent ''legitimately construed the request as requiring the delivery of payroll records for the existing bargaining unit employees.'' Any mistake in the matter is certainly not so egregious as to rise to the level of a refusal to bargain in good faith.

[3] As set forth above, we disagree with our dissenting colleague's interpretation of the facts concerning this issue. We note that the Union's reference to the Respondent's wage cut demand, discussed in the dissent, is preceded by the phrase ''[i]n addition.'' Clearly, the wage cut was an issue separate and apart from the contract violation issue; and we do not believe this second concern confused an otherwise clear request for information.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT bargain to impasse over our demand for a 10-percent wage cut, where such demand is made for the purpose of recouping moneys paid to employees pursuant to a previous Board Order and Backpay Settlement.

WE WILL NOT fail to provide wage information to Amalgamated Clothing and Textile Workers Union, AFL–CIO in a complete and timely manner.

WE WILL NOT unilaterally change terms and conditions of employment and fail to pay Christmas bonuses to our employees in December 1992 without first bargaining in good faith with the Union about such changes.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production employees employed by the Respondent at its Gloversville plant; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with the payroll information requested in its June 19, 1992 letter.

WE WILL make whole the employees who were not paid Christmas bonuses in December 1992, with interest.

GLOVERSVILLE EMBOSSING CORP.

Alfred M. Norick, Esq., for the General Counsel.
Christian Fleissner, for the Respondent.
William Towne, for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Albany, New York, on July 26, 1993. The charge and amended charge in Case 3–CA–17217 were filed on July 9, 1992, and December 30, 1992. The charge in Case 3–CA–17880 was filed on May 26, 1993. A consolidated complaint was issued by the Regional Director for Region 3 on July 2, 1993. In substance, this complaint alleges:

1. That the Employer, since June 19, 1992, has failed to furnish to the Union, in a timely manner, copies of its payroll records for the period from February 1, 1988, to June 19, 1992.

2. That since on or about March 17, 1992, the Employer conditioned bargaining for a collective-bargaining agreement on the Union agreeing to a 10-percent wage cut so that the Employer could recoup moneys it paid in compliance with a previous Board Order in 297 NLRB 182.

3. That on or about December 18, 1992, the Respondent unilaterally eliminated its prior practice of giving employees a Christmas bonus.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent a New York corporation, provides leather embossing services at its facility in Gloversville, New York, where it annually furnishes services valued in excess of $50,000 to enterprises located inside the State of New York who in turn were directly engaged in interstate commerce. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Union was certified by the Board on July 1, 1987. The unit is described in the previous case as:

> All full-time and regular part-time production employees and drivers employed by the Respondent at its Gloversville plant; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Notwithstanding the certified unit description there were no drivers at any time relevant to the present case.

In a prior case involving the same parties (297 NLRB 182), the Board on October 30, 1989, made the following findings and conclusions:

1. That the Company had failed to execute and abide by a collective-bargaining agreement that was reached by the Union and the Employer's attorney, Robber E. Grey, on January 25, 1988, and thereby violated Section 8(a)(1) and (5) of the Act.

2. That the Company, in violation of Section 8(a)(1) and (3), discharged employees who engaged in an economic strike and refused to reinstate them on their unconditional offers to return to work.

3. That the Company, in violation of Section 8(a)(1) and (5), refused to furnish the Union with financial information after claiming that the Union's demands would bankrupt the Company. The Board held that the fact that the Company offered to provide this information 3 months after it was requested did not absolve it from the violation.

4. That the Company violated Section 8(a)(1) by telling employees that its president would not bargain with the Union and conducting itself in a manner indicating its refusal to bargain.

5. That the Company violated Section 8(a)(1) and (5) by offering to bargain directly with employees and bypassing the Union by making direct offers to employees of wage increases and other improvements in their terms and conditions of employment in exchange for their cessation of picketing, abandonment of support for the Union, and return to work.

6. That the Company violated Section 8(a)(1) and (5) by unilaterally implementing, in the absence of a lawful impasse, a wage increase without notice to or bargaining with the Union.

In addition to ordering the Company to reinstate and make whole the employees it had unlawfully discharged, the Company was also required, on request of the Union, to execute and abide by the agreement negotiated on January 25, 1988, and make the employees whole for any losses they suffered as result of its refusal to abide by the agreement.

Subsequent to the Board's decision in the prior case, the Regional Office issued a compliance specification and notice of hearing on October 31, 1990. This specification listed two categories of backpay. One was for an amount of backpay arising out of the Company's failure to abide by the terms of the collective-bargaining agreement. The other was for an amount relating to the claimed backpay for the discharged strikers. In July 1991, the Company made payments of $4938 covering the first category and in January 1992, the Company made payments totaling $37,028 covering the second category. The total was $41,966.

B. *The Negotiations*

The contract that the Company was ordered to execute ran for a term from February 1988 to January 31, 1991. The Union, by letter dated November 19, 1990, requested the Respondent to meet and bargain for a new contract. As the Company did not respond, the Union on January 28, 1991, sent a letter to the Company's attorney, Robert Gray, asking for dates to bargain. This letter was re-sent on February 11, 1991, when the Union did not receive any answer.

Notwithstanding the halting start, the parties did get together on February 26, 1991. Representing the Union were Union Representative William Towne and employee shop steward, Larry Lehr. For the Company were Attorney Grey[1] and the Company's president, Christian Fleissner. Towne, who I find was a credible witness, testified that Fleissner said that the Company had been losing money for the last 2 years; that he didn't know what the final numbers were going to be on the backpay settlement and didn't know if that would lead to a closing of the plant or the filing for bankruptcy. Towne testified that Gray proposed a 1-year rollover on the contract with there being a freeze on wages. Towne states that he was unsure as to who was actually working so he asked for (1) a seniority roster, (2) a list of employees, and (3) a copy of their health insurance plan. The Union did not give its contract proposals at this meeting.

On March 18, 1991, Gray sent a letter to Towne furnishing some information. The letter stated:

> Per your request: Bargaining unit salaries for the year ending 5/31/89 were $139,031; bargaining unit salaries for the year ending 5/31/90 were $117,963.34.

The next bargaining session took place on April 4, 1991, and involved the same people. Towne credibility testified that the Company took the position that they didn't really know what the backpay settlement was going to be. He states that he asked for the payroll information that was requested at the preceding meeting. According to Towne, Fleissner said that business was down. He states that when he asked if the Company was losing money, Fleissner said he wasn't sure because he hadn't gotten the fiscal statements for the year; that he either made or lost $3000. Towne testified that the Company said that they still didn't know what the backpay was going to be and that it could lead to a closing or bankruptcy. He states that the Union gave the Company its economic proposal, which was for a 3-year agreement, with wage increases in each year of 25, 30, and 35 cents. Towne states that the Company asked for certain language concessions from the old contract and that it maintained its position calling for a 1-year freeze.

On April 8, 1991, the Union received a fax from the Company which provided certain information. This listed 11 employees and their dates of hire. The communication also furnished the requested health insurance information. (Accordingly, all information requested by the Union as of the February 26, 1991 meeting had been provided.)

On April 24, 1991, the Union sent another contract proposal to the Company, which was as follows:

1. Four year agreement.
2. Wages

'' - 2/1/91 - 1/31/92	.10 per hour increase
'' - 2/1/92 - 1/31/93	.25 per hour increase
'' - 2/1/93 - 1/31/94	.30 per hour increase
'' - 2/1/94 - 1/31/95	.35 per hour increase

3. Delete - Article XXI - Full Employment.[2]
4. Holiday Pay - To be calculated 8 times individual's hourly rate for all holidays.
5. All other terms and conditions to remain the same as current agreement.

[1] Grey is deceased.

[2] The Company at the April 4 meeting had requested that this provision be deleted from the old contract.

Inasmuch as the Company did not respond to the Union's April 24 proposal, Towne wrote a letter to Gray on June 12, 1991. This stated:

> I forwarded you the enclosed on April 24 of this year.
>
> I have spoken with you several times over the telephone concerning the company's response. You informed me during all of these telephone conversations that you would contact Mr. Fleissner. Yesterday, during the Colonial arbitrations . . . you informed me that you had in fact contacted Mr. Fleissner and he had promised to get back to you.
>
> Be advised that if we do not receive a prompt response to our proposal the Union will have to file the necessary unfair labor practices charges.

A third and short bargaining session was held on July 9, 1991. The Company maintained its position for a wage freeze. When Towne asked how long a wage freeze was supposed to last, Fleissner said that he didn't know; as long as it takes. The Company asserted during this meeting that it still needed to know what the backpay calculation and settlement was going to be. Also, the Company rejected the Union's request to inspect its financial records.

On or about July 30, 1991, the Company partially complied with the backpay specification by making payments to its employees totaling $4938. As noted above, this amount was to remedy that portion of the Board's Order requiring the Company to execute and abide by the terms of the previous contract.

Towne testified that in the summer and fall of 1991 he spoke to Grey over the phone and asked when negotiations could resume. He states that Grey responded that nothing could happen until the Company knew what its remaining backpay liability was going to be.

As noted above, in early January 1992, the Company made payments totaling $37,028, which covered the remaining backpay claims. On January 6, 1992, Towne wrote the following letter to Fleissner:

> Now that the back pay issue and the unfair labor practice charges have apparently been settled, the Union is requesting by receipt of this letter another collective bargaining session for a new agreement.
>
> Please contact me for mutually acceptable dates.

By letter dated February 5, 1992, the Union repeated its request to bargain as it had not received any response to its January letter. Thereafter, on March 6, in the absence of a reply, the Union filed an unfair labor practice charge alleging that the Company had refused to meet and bargain. Upon assurances by Gray that the Company would bargain, the Union withdrew this charge on April 1, 1992. However, during a telephone call, Gray told Towne that it was Fleissner's position that the Company's economic proposal (the wage freeze) would have to change now because the Union owed him $40,000. Towne could not recall when this conversation took place and Gray was not available to comment one way or the other.

The parties met on March 17, 1992, at which time Fleissner announced that Gray no longer represented him. Towne credibly testified that Fleissner said that the Union had to pay him back $40,000. (This claim, no doubt for the amount of money the Company owed and paid to its employees as part of the backpay settlement, was immediately rejected by the Union.) According to Towne, Fleissner said that his new counterproposal was for a 10-percent across-the-board wage cut. Towne states that when he asked for what period of time this was proposed, Fleissner said that he didn't know. According to Towne, he (Towne) said that he didn't see how we could go much further unless the Union obtained the books and records. He states that Fleissner, as he was leaving the room stated, ''Well that's too bad. You should have taken my first offer.'' (Presumably the wage freeze.)

On March 24, 1992, the Union sent a letter to the Company stating in pertinent part:

> You stated on behalf of your company at the negotiation session on Tuesday, March 17th that you could not meet the union's proposal for a new . . . agreement. You stated that for your last fiscal year you believed that Gloversville Embossing Corp. either showed a profit of $3000 or a loss of $3000. You further stated that you expected the current fiscal year's deficit to be much higher.
>
> Your proposal, conveyed to the union on Tuesday, March 17th, was a 10% across the board wage cut. When asked by the union the time frame for this wage cut, you stated you had ''no idea.'' You then stated that your were not going to put any more money into Gloversville Embossing Corp. and you need to recoup the losses your company had incurred for the last two years. In addition, you stated that you needed to recoup the approximately $40,000 you had paid to union bargaining unit members in settlement of the National Labor Relations Board complaints.
>
> . . . .
>
> Please be advised that we intend to pursue available legal remedies including filing charges if:
>
> 1. Satisfactory arrangements have not been made for allowing the union to inspect your financial books and records within 7 days from the date of this letter.
>
> 2. We do not receive the above requested insurance information within 7 days from the date of this letter.
>
> 3. We do not receive the above requested documentation requested on Mr. Richardson and Mr. Lampman within 7 days from the date of this letter.
>
> 4. We do not receive a seniority roster update within 7 days from the date of this letter.

On March 28, 1992, the Company responded as follows:

> I am in receipt of your letter dated March 24, 1992 in which you falsely claim that I said some things. I vehemently object to your misquotes as I never said some of the claims that you make. I want to be on record and set the record straight so that you will have no illusions as to exactly what was said.
>
> (1) You claim that I could not meet the union's proposal for a new collective bargaining agreement. In fact, I said I would not meet the union's proposal for a new collective bargaining agreement. There is a big

difference in the words could and would. It is my decision as to what I want to do regarding salaries both in the bargaining unit and outside the bargaining unit.

(2) I did propose to reduce wages on the bargaining unit by 10%. In the past few months I reduced management's gross pay by more than 20% in a drastic cost cutting program that has been instituted.[3]

(3) I did not state that Roger Richardson and Randy Lampman had quit their employment last year. I do not know the exact time frame. I told you that I would go over the personnel records with my secretary and get you a current seniority list as soon as possible . . . .

(4) You charge that we changed the health insurance plan for bargaining unit employees. I never said this. How can you put in writing such a lie? I said that the payment plan was changed from a quarterly payment period to a monthly payment period . . . .

You will not be allowed to inspect our financial records. You have no legal grounds to even make this request. If you remember, you requested this information 4 years ago. At that time we agreed and you made a mockery of the system by never setting up a date to inspect our books.[4]

On March 30 and April 6, 1992, the Company sent letters to the Union providing certain information which had been requested. This included the name of the medical insurance carrier along with a brochure and a list of the current employees who were covered by the plan. Also furnished was a list of nine employees with their dates of hire and their addresses.

On May 20, 1992, Towne sent a letter to Fleissner complaining that no dates had been set for resuming the negotiations.

On May 26, 1992, an employee, Randy O'Neill filed a decertification petition in Case 3–RD–1088. By so doing, he sought to have the Union ousted, pursuant to a Board-conducted election, as the collective-bargaining representative of the Company's employees. (The petition asserts that there were at that time eight employees in the unit.)

June 2, 1992, Towne sent another letter to the Company stating in pertinent part:

I forwarded to you a letter on May 20, 1992 requesting the scheduling of another negotiation session. As of this date, you have not responded. I am requesting that you immediately contact me to schedule mutually acceptable dates to resume negotiations.

After reviewing the Gloversville . . . updated seniority roster, which Bob Eidschun brought to my office on March 31st, the Union needs clarification. Please review your records and forward to me the dates of hire for Denise Brooks, Timothy Hayward, Connie Frye and Brenda O'Neil as we do not feel these dates are correct. In addition the Union needs the dates that these employees last worked for Gloversville. . . .

. . . .

[T]he Union is continuing its demands to inspect the financial books and records of the Gloversville Embossing Corp. While the Union did request this information years ago, that was then and this is now.

The final meeting was held on June 17, 1992, on the same day that a hearing was conducted with respect to the decertification petition. Towne testified that he said that the Union was still looking for the books and records and not going anywhere. He states that Fleissner said that the Union was never going to get financial information. According to Towne, in addition to asking for the financial books and records, he also asked for payroll information, in the form of employee timecards because he wanted to determine what various people were being paid per hour. He states that Fleissner's response was, ''You're running out of time. You're going to be decertified out and you know it's amazing, but I didn't have anything to do with it, so you're just wasting your time because you're going to be out of here.'' After a brief exchange between Fleissner and the plant manager, Eidschun, the Company's representatives left the meeting. There does not appear to have been any discussion of either side's bargaining proposals and no arrangements were made to have any further meetings.

C. *The Request for Information*

There were numerous requests by the Union for information during the negotiations as described above. Some of that requested information was furnished and some was not. There is no question but that the Union asked for financial records and that the Company refused to furnish that information. But that is not alleged in this case to be a violation of the Act.

The complaint only alleges that the Company refused to furnish a portion of a request for information that was made by the Union on June 19, 1992. Moreover, the complaint does not allege that the information was not furnished at all; rather it alleges that it was not furnished in a timely fashion. Insofar as relevant. The June 19 letter stated:

In an effort to fulfill the Union's duty of fair representation and responsibilities it is again necessary to obtain certain information from you.

The purpose of this request is that the Union believes that our contract which expired on February 1, 1991 has been violated. In addition, because of your continued demands in our current negotiations for a 10% across the board wage cut, the Union believes you have been engaging in unfair bargaining. Please provide the Union with the following information:

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[3] In an affidavit, Fleissner made the following statements about the negotiations and the proposed 10-percent wage cut:

Towne alleges that I have refused to schedule negotiation sessions in a timely fashion and engaging in surface bargaining with the Union. Whenever the Union requested to meet for bargaining, I agreed to meet with them. I have never refused to meet with the Union. I have told the Union that I wanted to reduce wages by 10% but Towne refused to take my proposal to the members for a vote. I did not tell Towne that I was either making money or losing money during our sessions. I did tell Towne that I intended to recover some of the $40,000 in back wages that I had to pay due to NLRB Order. I told Towne that I wanted to recover some of this loss but I never told him that the company was losing money.

[4] This letter goes on to detail a few more complaints about the Union and also about Larry Lehr.

1. Beginning February 1, 1988 to the present copies of all payroll records for all bargaining unit employees.[5]

The evidence shows that on August 17, 1992, the Company delivered to the Union's office copies of payroll records for the period requested insofar as the employees then employed. This was about 2 months after the initial request was made and no reason was given by the Employer as to what if any circumstances caused the delay.

D. *Failure to Pay Christmas Bonuses*

Pursuant to the expired contract (schedule A, sec. 3), employees were entitled to receive a Christmas bonus of 1 percent or 2 percent of their annual earnings, depending on their tenure of employment. It is not disputed that in December 1990 and December 1991 the Company paid such bonuses to the bargaining unit employees. It also was conceded by the Company that it did not pay this bonus to unit employees in December 1993. At no time did the Company notify the Union ahead of time that it intended to discontinue giving the Christmas bonus.

III. ANALYSIS

The Supreme Court in *Borg-Warner Corp.*, 356 U.S. 342 (1958), in defining the bargaining obligations imposed by the Act, made a distinction between mandatory and nonmandatory subjects of bargaining. In essence, those topics which relate to terms and conditions of employment are considered to be mandatory subjects of bargaining whereas those that do not are defined as permissive. (A third category also exists consisting of illegal subjects of bargaining which would involve a situation where a union or a company insists on a contract provision, such as an illegal 8(e) clause, which would be illegal.)

With respect to permissive or illegal subjects of bargaining the proponent of such a subject or contract clause may not condition an agreement on the other side's acceptance of the subject; nor may it bargain to impasse over it. In *Borg-Warner*, the Court, in finding that a company violated the Act by insisting as a condition of agreement, that a certified union change the recognition clause of a contract, stated:

> The company's good faith has met the requirements of the statute as to the subjects of mandatory bargaining. But that good faith does not license the Employer to refuse to enter into agreements on the ground that they do not include some proposal which is not a mandatory subject of bargaining. We agree with the Board that such conduct is, in substance, a refusal to bargain about the subjects that are within the scope of mandatory bargaining. This does not mean that bargaining is to be confined to the statutory subjects. Each of the two controversial clauses is lawful in itself. Each would be enforceable if agreed to by the unions. But it does not follow that because the company may propose these clauses, it can lawfully insist upon them as a condition to any agreement.[6]

Neither party to a collective-bargaining relationship may condition agreement on the other side's withdrawal of a previously filed unfair labor practice charge. *John Wanamaker Philadelphia*, 279 NLRB 1034 (1986); *Litton Industries v. NLRB*, 533 F.2d 1030 (8th Cir. 1976). Further, a party may not insist to impasse that the other party abandon a law suit. *NLRB v. Carpenters Local 964 (Contractors & Suppliers Assn.)*, 447 F.2d 643 (2d Cir. 1971).[7]

In the present case, the evidence convinces me that the Respondent at least as of March 17, 1992, and thereafter, was seeking by way of the negotiations, to recoup the approximately $40,000 that it had paid pursuant to its settlement of the backpay claims in the prior case. The evidence establishes that Fleissner on that date said that the Union had to pay him back $40,000 and announced that his previous wage freeze proposal was changed to a demand for a 10-percent across-the-board cut in wages.[8]

While a demand for a wage cut would normally be construed, in and of itself, as a mandatory subject of bargaining, its coupling here with the statement that the Union owed the Company approximately $40,000 indicates that this demand was inextricably related to the prior unfair labor practice proceeding. Had the Company, at the start of these negotiations and/or prior to the issuance of the backpay specification, insisted that the Union withdraw the charge in the previously litigated case, there would be no doubt that such a demand should be construed as a permissive subject of bargaining. And if that was made a condition of reaching an agreement, the Company would have violated its bargaining obligations under Section 8(a)(5) of the Act. In the present case, the only real difference is one of timing. For if the demand for a 10-percent wage cut is made *for the purpose* of recouping the backpay liability that the Company suffered as a result of an unfair labor practice charge having been successfully processed, then the demand should be construed as the equivalent to a demand that the Union withdraw its unfair labor practice charge.

After March 17, 1992, the final bargaining session was held on June 17, 1993. This final meeting was held after an

[5] In addition, the letter requested copies of payroll records for Kevin Houghtaling and the financial books and records of the Company. As to these items, the General Counsel refused to issue a complaint.

[6] See also *Salt River Water Users Assn.*, 204 NLRB 83 (1973), enfd. 498 F.2d 393 (9th Cir. 1974), where the employer was found to have violated Sec. 8(a)(5) by insisting to the point of impasse, that certain employees be excluded from a bargaining unit based on the mistaken belief that they were supervisors within the meaning of the Act.

[7] But see *Carlsen Porsche Audi*, 266 NLRB 141 (1983), where a violation was not found because the evidence did not establish that the proponent of a permissive subject of bargaining had insisted to impasse. Cf. *Star Mfg. Co. v. NLRB*, 536 F.2d 1192 (7th Cir. 1976), where the court found that the employer did not violate the Act by insisting on the withdrawal of an unfair labor practice charge before bargaining commenced.

[8] In the March 18, 1991 letter sent by Gray to the Union, he stated that the Company's salaries for bargaining unit personnel for the year ending 5/31/90 was $117,963. If one reduced that figure by 10 percent over a 4-year contract term proposed by the Union, the resulting savings would be $11,796.30 x 4 = $47,184.2. As the evidence shows that the Employer's payroll was further reduced in 1992, the 10-percent pay cut would come closer to the amount that the Company paid as a result of the previous backpay settlement.

employee had filed a decertification petition and it ended with Fleissner's statement that the Union was running out of time and would soon be decertified. In fact, the credible evidence indicates that there was a total absence of any meaningful discussion of any contractual proposals. As no further meetings were held and neither side requested any more meetings, it seems obvious that the parties were at an impasse as of June 17, 1992.

Since there was no meaningful exchange or discussion of contract proposals on June 17, 1992, we must look to the previous bargaining session to determine what it was that could reasonably be said to have caused the impasse. Apart from the Company's assertion that it would not agree to the Union's contract proposals and the Union's demands for certain information (including financial information), the only other proposal on the bargaining table was the Company's demand that the Union agree to a 10-percent across-the-board wage cut. While this particular demand was made by the Company on only one occasion (that being on March 17, 1992), there were no further exchanges of contract proposals and this demand was not retracted either before, on, or after June 17, 1992, when the parties reached impasse.

Although this set of circumstances may be somewhat unusual, it is my opinion that when impasse was reached on June 17, 1992, a major reason for the impasse (albeit not the exclusive reason) was the Company's insistence on recouping money, by way of its demand for a 10-percent wage cut, which it had paid pursuant to a liability incurred under a previous unfair labor practice charge. As I view this as an insistence to impasse on a permissive subject of bargaining, I conclude that the Respondent has violated Section 8(a)(1) and (5) in this respect.

The evidence also shows that the Union, on June 19, 1992, made a request for certain information which included a request for copies of all payroll records for all bargaining unit employees for the period from February 1, 1988, to the present.

Although the Company had affirmatively responded to prior information requests (except insofar as financial records), the Company did not furnish the payroll information requested by the Union's June 12 letter until August 17, 1992, almost 2 months later.[9]

Wage information relative to bargaining unit employees is presumptively relevant and therefore an employer must, on request, furnish such information to a union which represents its employees. *Pfizer, Inc.*, 268 NLRB 916, 918 (1984); *Gunn & Briggs, Inc.*, 267 NLRB 944, 947 (1983).

Moreover the duty to furnish relevant information carries with it the obligation to provide such information in a timely manner. *Civil Service Employees Assn.*, 311 NLRB 6, 8 (1993).

In my opinion, the failure of the Company to provide the wage information requested until August 17, 1992, was untimely and therefore violative of Section 8(a)(5) of the Act.

Finally, I agree with the General Counsel that the Employer's refusal to pay the annual Christmas bonus to its employees constituted a unilateral change in violation of Section 8(a)(5) of the Act.

Under the National Labor Relations Act, an employer is not free to unilaterally change or modify the terms and conditions of employment contained in an expired collective-bargaining agreement. An employer must maintain such terms and conditions (except for the remittance of union dues), until a new agreement is reached which modifies or terminates such obligations; or until after a lawful impasse is reached whereupon the employer may unilaterally implement some or all of its last contract offer;[10] or until the employer is legally discharged of its obligation to recognize and bargain with the Union.

In the present case, there did exist a contract between the Employer and the Union even if it remained unsigned by the Company. That contract, which expired on January 31, 1991, contained a provision whereby the Employer agreed to give Christmas bonuses to its bargaining unit employees in the amounts of 1 or 2 percent of their annual wages (with some exclusions), depending on their tenure of employment. As the evidence establishes that the Company failed to pay the Christmas bonuses in December 1993, and did so without notification to the Union, it is concluded that the Respondent violated the Act in this respect.

CONCLUSIONS OF LAW

1. By bargaining to impasse over its demand for a 10-percent wage cut, such demand being made for the purpose of recouping from employees, the amounts paid to them pursuant to a Board Order and backpay settlement, the Respondent conditioned bargaining on a permissive subject of bargaining and violated Section 8(a)(1) and (5) of the Act.
2. By failing to provide wage information to the Union in a timely manner, the Respondent has violated Section 8(a)(1) and (5) of the Act.
3. By unilaterally changing terms and conditions of employment and failing to pay Christmas bonuses to its employees in December 1993, the Respondent violated Section 8(a)(1) and (5) of the Act.
4. The aforesaid violations affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Insofar as the Christmas bonuses, I shall recommend that the Employer make such payments, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), in accordance with the terms of the expired collective-bargaining agreement, to those of its bargaining unit employees who were employed at that time.

Because the Respondent has demonstrated a proclivity for violating the Act, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any manner on rights guaranteed employ-

[9] In this regard, the Company furnished payroll records for the period requested in relation to the persons employed as of the date of the letter. In this respect, it seems to me that the Company legitimately construed the request as requiring the delivery of payroll records for the existing bargaining unit employees and complied with this request on that basis.

[10] See *Taft Broadcasting Co.*, 163 NLRB 475 (1967), affd. 395 F.2d 622 (D.C. Cir. 1968); *Colorado Ute Elecric Assn.*, 295 NLRB 607, 609 (1989); and *Sacramento Union*, 291 NLRB 552 (1988).

ees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

[Recommended Order omitted from publication.]